

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

## Dallas Division

ROBERT HOPKINS, III, \*  
\*  
\* Plaintiff, \*  
\*  
\* v. \* Civil Action No. 3:22-cv-00706 (E)  
\*  
\*  
\* DEPARTMENT OF DEFENSE, \*  
\*  
\* Defendant. \*

\* \* \* \* \*

**PLAINTIFF'S CORRECTED PARTIALLY UNOPPOSED  
MOTION TO STAY BRIEFING OF DEFENDANT'S  
MOTION TO DISMISS AND FOR SUMMARY JUDGMENT<sup>1</sup>**

NOW COMES Plaintiff to respectfully ask the Court to stay the briefing of Defendants' Motion to Dismiss and for Summary Judgment, Dkt. #32, until it resolves Plaintiff's forthcoming two procedural motions: one to unseal part of Defendant's appendix and one to authorize access by the undersigned to the response Plaintiff submitted directly to Defendant on 24 July 2023 demonstrating that the information being censored by Defendant in this case was previously officially declassified and/or disclosed. A district court's decision to stay a

<sup>1</sup> This Motion has been corrected to clarify Defendant's position, which Defendant's counsel has argued is more nuanced than represented in Dkt. #35. Because this clarification has transformed this Motion from an unopposed motion to a partially unopposed motion, the Motion has been accordingly modified to comply with Local Rule 7.1(b)(2).

proceeding is reviewed on appeal for abuse of discretion. *Plaquemines Par. v. Chevron United States, Inc.*, 84 F.4th 362, 373 (5<sup>th</sup> Cir. 2023).

## **I. ARGUMENT**

Plaintiff has good cause to request this extension. For the reasons which will be set forth in the forthcoming motion to unseal, Plaintiff maintains that certain information in the purportedly classified appendix directly relevant to his case in chief is not classified or even classifiable, and that Defendant is accordingly required to file it on the public record. For the reasons which will be set forth in the forthcoming motion for access, Plaintiff maintains that his undersigned attorney is entitled to see the evidence he has provided to Defendant proving that the information being censored in this case has been officially declassified or was not classified in the first place, so that his undersigned attorney can accordingly use that evidence to prove as much to the Court. It is therefore in the interest of judicial economy and fairness to resolve these forthcoming motions—the first of which will be filed on 5 January 2024 and the second of which will likely be filed soon thereafter—before requiring Plaintiff to attempt to write a brief which would by definition be fundamentally altered by the granting of either motion. Plaintiff accordingly asks that the Court stay this briefing and order that Plaintiff's opposition to Defendants' motion and any accompanying cross-motion be filed no later than two weeks from the date it resolves the intervening motions.

## **II. CERTIFICATE OF CONFERENCE**

The undersigned and Defendant's counsel Lisa Newman conferred regarding this Motion on 4 December 2024 and the results were as follows: Defendant does not oppose this Motion insofar as it asks the Court to stay the briefing while the Court resolves the forthcoming motion to unseal but does oppose this Motion insofar as it asks the Court to stay the briefing while the Court resolves the forthcoming motion for access. The parties were unable to reach agreement due to Defendant's contention that Plaintiff's forthcoming motion for access lacks merit. However, since both motions are anticipated to be filed in close proximity to one another, and since the logic of staying the briefing while resolving one motion equally applies to staying the briefing while resolving both motions, this is in Plaintiff's view a distinction without a difference. Since Defendant's opposition is premised entirely on its contention that the forthcoming motion for access should be denied, it should not be heard to complain that it will be prejudiced by giving the Court an opportunity to potentially agree with it before briefing resumes.

## **III. CONCLUSION**

The Court should grant this Motion and stay all briefing on Defendant's motion until the two forthcoming motions have been adjudicated. A proposed Order has been included with this Motion.

Date: January 4, 2024

Respectfully submitted,

/s/ Kelly B. McClanahan  
Kelly B. McClanahan, Esq.  
N.D. Tex. Bar #984704DC  
National Security Counselors  
4702 Levada Terrace  
Rockville, MD 20853  
301-728-5908  
240-681-2189 fax  
[Kel@NationalSecurityLaw.org](mailto:Kel@NationalSecurityLaw.org)

*Counsel for Plaintiff*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing filing contains 596 words.

/s/ Kelly B. McClanahan  
Kelly B. McClanahan, Esq.